

Before the

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Utilities Service ("RUS")
RIN: 0572-ZA01

UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration ("NTIA")
RIN: 0660-ZA28

IN THE MATTER OF)	
Broadband Initiatives Program and)	Docket No. 0907141137-91375-05
Broadband Technology Opportunities Program)	
Joint Request for Information)	

Comments of the Montana Telecommunications Association

Submitted by
Geoffrey A. Feiss, General Manager
Montana Telecommunications Association
208 North Montana Avenue, Suite 105
Helena, Montana 59601
406.442.4316
gfeiss@telecomassn.org

November 30, 2009

Table of Contents

Executive Summary	3
Introduction	4
I. Application and Review Process	6
A. <i>Streamlining the Applications</i>	6
1. <i>New Entities</i>	6
2. <i>Consortiums and Public-Private Partnerships</i>	6
3. <i>Specification of Service Areas</i>	7
4. <i>Relationship between BIP and BTOP</i>	7
B. <i>Transparency and Confidentiality</i>	8
D. <i>NTIA Expert Review Process</i>	8
II. Policy Issues Addressed in the NOFA	9
A. <i>Funding Priorities and Objectives</i>	9
1. <i>Middle Mile “Comprehensive Community” Projects</i>	10
3. <i>Targeted Populations</i>	11
4. <i>Other Changes</i>	12
B. <i>Program Definitions</i>	13
C. <i>Public Notice of Service Areas</i>	14
D. <i>Interconnection and Nondiscrimination Requirements</i>	14
E. <i>Sale of Project Assets</i>	14
F. <i>Cost Effectiveness</i>	15
G. <i>Other</i>	15

Executive Summary

The Round 2 NOFA must ensure transparency and accountability, even if applicants consider such requirements burdensome. MTA strongly supports the two-step review process, and urges RUS and NTIA to strengthen due diligence and public notice requirements for all applications.

The agencies should be particularly cautious in considering applications by entities that are created for the purpose of applying for BIP or BTOP funds.

MTA supports retaining the requirement that applications first be submitted to RUS, so that RUS can verify compliance with the Recovery Act prohibition against funding projects in areas where RUS has funded a project.

It is imperative that applicants file complete, unredacted, executive summaries that enable public scrutiny of all aspects of a project. All projects should be subject to public notice and opportunity for comment and all other due process mechanisms prior to submission, regardless of whether such applications are proposed by public entities, private entities or public-private partnerships.

RUS and NTIA should focus stimulus activity in areas of greatest need. The agencies should **not** grant applications that duplicate or overbuild existing broadband networks—a significant problem with Round 1 applications. Network duplication conflicts with the goals of the Recovery Act by threatening job creation, discouraging investment and retarding economic development. The overarching priority for BIP and BTOP funding should be directed at projects that bring broadband service to areas of greatest need: i.e., unserved areas.

A refocused emphasis on middle mile “comprehensive community” projects in Round 2 NOFA is premature and likely unnecessary. Many Round 1 middle mile projects would, if funded, overbuild existing networks. Moreover, both the FCC and NECA are undertaking studies on middle mile issues. These issues more likely relate to affordability and access to bandwidth, not access to infrastructure.

MTA strongly urges the agencies to leverage existing broadband infrastructure to reach currently unserved and underserved areas. Leveraging existing facilities enhances scale, scope and efficiency of projects.

MTA recommends revisions to the definitions of underserved last mile and middle mile projects. However, MTA supports the intent of the current definition of “remote” areas: to ensure that the most isolated, highest-cost to serve, unserved communities receive the benefit broadband stimulus funding. Serving unserved, remote areas is the primary objective of the broadband stimulus program.

Introduction

The Montana Telecommunications Association (“MTA”) is pleased to have the opportunity to respond to the Departments’ of Agriculture and Commerce Joint Request for Information (“RFI”) regarding targeted revisions to the first Notice of Funds Availability (“NOFA”) which provides rules for the Departments’ implementation of the RUS Broadband Initiatives Program (“BIP”) and the NTIA Broadband Technologies Opportunity Program (“BTOP”) under the American Recovery and Reinvestment Act of 2009 (“Recovery Act”).

MTA represents independent rural telecommunications providers serving business and residential consumers throughout Montana. MTA’s members include small and large companies, serving as few as 1,000 customers and as many as 60,000 customers. These companies are both member-owned cooperatives and shareholder-owned commercial telecommunications service providers. They are exemplary—often exceeding national benchmarks—in providing state-of-the-art services, including access to broadband telecommunications technology, to the edges of their networks despite the significant challenges of “distance and density” that they face.

Collectively, the rural local exchange carriers (“RLECs”) of Montana provide service to roughly one-third of Montana’s access lines, covering 80% of Montana’s landmass, an area comprising over 120,000 square miles. These RLECs’ service areas *average* fewer than 3 access lines per mile. Yet, these companies provide access to broadband telecommunications services to the vast majority of their customers; in some cases nearly 100% of their consumers have access to broadband services. Montana’s rural telecom providers have deployed DSL service to their business and residential consumers, including anchor institutions as schools, libraries, health care providers, emergency service providers, senior centers and other anchor institutions serving key populations. These companies are now deploying Ethernet service and fiber to the premise to their service areas. Montana’s RLECs also provide middle mile backbone

connectivity throughout the state, including connectivity to and among all seven of Montana's tribal reservations.

Montana is considered rural, if not frontier, by any definition. And yet, rural Montanans generally enjoy access to a robust telecommunications network that provides broadband services to residential and business consumers including anchor institutions.

The purposes of the Recovery Act, as stated by the RFI include the preservation and creation of jobs and promotion of economic recovery; assistance to those most affected by the recession; promotion of investment that will provide long-term (sustainable) economic benefit; and stabilization of state and local government budgets. The RFI notes that the purpose of the RUS BIP program "is to improve access to broadband in rural areas without service or that lack sufficient access to high-speed broadband service, and to facilitate economic development." The NTIA BTOP program shares similar goals: to promote deployment of broadband infrastructure in unserved and underserved areas of the United States; to enhance broadband capacity at public computer centers; and to promote sustainable broadband adoption. The objectives of both programs are to spur job creation and stimulate long-term economic growth and opportunity. (RFI, 2.)

It is in this context that MTA addresses its concerns about certain NOFA rules that seem to permit, if not encourage, applicants to seek federal funding for projects that duplicate existing broadband networks and services. Such duplication, if permitted by NTIA and RUS, would conflict with the goals of the Recovery Act, and the BIP and BTOP programs by threatening job creation, discouraging investment and retarding economic development.

MTA's recommendations for revising or retaining NOFA rules are based on ensuring that applications for BIP or BTOP are transparent; that applicants are held accountable for the assertions they make in their applications; and funding remains consistent with the goals of the Recovery Act and the statutory purposes of the BIP and BTOP programs.

I. The Application and Review Process

A. Streamlining the Applications. In what ways should RUS and NTIA streamline the applications to reduce the burden on applicants? Should the agencies modify the two-step review process? (RFI, 3.) MTA certainly understands the impetus for these questions. The process indeed was cumbersome, especially given the amount of time—or lack thereof—to complete applications. However cumbersome the process may have been, it did not deter 2,200 applicants from submitting their applications. And in some ways, as discussed below, the process may not be detailed enough. Indeed, MTA believes the two-step review process should be strengthened so that assertions regarding the scope and scale of applicant’s proposed projects can be more fully vetted and corroborated prior to submission and review by NTIA and RUS. In short, there is not enough due diligence built into the NOFA application process.

1. *New Entities.* MTA is concerned with the apparent interest by RUS and NTIA in facilitating applications by “new businesses, particularly those that have been newly created for the purpose of applying for grants under the BIP and BTOP programs.” Start-up enterprises are inherently risky businesses. Start-ups whose business plans depend on one-time-only federal infusions of cash or loans raise immediate and serious questions regarding such enterprises’ prospects of long-term sustainability. There is substantial risk that such enterprises will cause far more long-term damage than short term benefit. The NOFA should take particular care to scrutinize the business plans of such enterprises that create themselves for the purpose of applying for BIP or BTOP grants. RUS and NTIA necessarily are putting taxpayers’ dollars at greater risk by investing in untested start-up firms whose future viability is unknown. At a minimum, these entities should match at least 20% of the cost of the project and in-kind matches should be strictly prohibited. Business plans should be carefully scrutinized and subject to thorough due diligence.

2. *Consortiums and Public-Private Partnerships.* It is critically important that both the “public” and the “private” partners of any public-private partnership demonstrate that their application has been fully vetted in a publicly noticed due process. Public notice and opportunity to comment on any proposed public/private partnership application are especially important when the public entity is a state that also has the ability to recommend its own application to NTIA or RUS in what constitutes a clear conflict of interest. Whenever public funds or resources are being committed to any project, the public should have full opportunity to comment on such a project prior to the public entity’s ability to commit to a project.

3. *Specification of Service Areas.* MTA members report significant inaccuracies in census block data used by applicants. For example, one application proposing a project in Southwestern Montana asserted that it would pass 236 businesses, when there are fewer than 400 total residents in the area proposed to be served. Some unconfirmed reports assert that census data include barns, abandoned houses, houses burned to the ground and other structures as “homes passed.” Using census block data appears to be an unreliable benchmark for determining the number of residential and business consumers in an area. As discussed above, it is essential that an opportunity for public due process is afforded to those entities that actually serve areas proposed for BIP and BTOP projects, since companies “on the ground” have a far more accurate knowledge of what actually exists in census block areas than applicants who appear to be unfamiliar with the areas they propose to serve.

4. *Relationship between BIP and BTOP.* MTA notes that applicants proposing middle mile projects in Montana appear to violate the statutory requirement cited in the RFI that “the Recovery Act prohibits a project from receiving funding from NTIA in areas where RUS has funded a project.” (RFI, 3-4.) At a minimum, the NOFA rule that requires applications to be submitted first to RUS should be retained so that RUS has an opportunity to determine if proposed projects violate the Recovery Act requirement that prohibits NTIA funding in areas where RUS has funded a project. The RUS

policy not to fund projects in areas where RUS has already committed resources is well founded, and demonstrably effective: RUS has a less than one percent default rate on its loans largely because RUS does not fund duplication.

B. *Transparency and Confidentiality*. It is imperative that applicants file complete, unredacted, executive summaries at a minimum. A strong argument can be made that the entire application should be posted and available for public scrutiny. After all, participation in the taxpayer-funded broadband stimulus program is voluntary. If applicants do not wish to reveal information about their intentions or financial stability or long-term sustainability, then they need not apply. On the other hand, it is essential that applications are fully transparent and that applicants are held accountable for their proposals. Taxpayers and parties that are directly or potentially affected by broadband stimulus projects must have the opportunity to see and analyze such proposals. In addition to requiring complete, unredacted executive summaries as a minimum NOFA requirement, the rules pertaining to filing executive summaries must require all applicants to file sufficient information to enable public scrutiny of the applicant's entire proposal, including deployment plans, financial standing, sustainability plans, and all other aspects of the application. In other words, applicants should not be allowed to "game" the executive summary by filing insufficient information—*effectively* redacting the summary without *actually* redacting it.

D. *NTIA Expert Review Process*. It is difficult, without seeing what applications are awarded and which ones are not, to determine how successful the expert review process will have been in Round 1. Nonetheless, MTA urges NTIA to make the review process as objective as possible. For example, RUS adopted scoring criteria, assigning point values to satisfying specific criteria. While one may object to the specific point values assigned to particular criteria,¹ the objectivity of the process is worth retaining in the Round 2 NOFA.

¹ For example, assigning greater value to serving the greatest population of unserved consumers is counterproductive. As MTA argued in its comments on the first round NOFA RFI, unserved populations—those in greatest need of broadband service—are likely to be few in number. Awarding points to greater populations effectively rewards deployment in areas that are more densely

The NOFA (p. 67) states that middle mile applications “will be scored on the level of need for a middle mile network in the area...whether there are middle mile providers already present in all or part of the area [and] what proportion of the network’s users are located in unserved or underserved areas.” The NOFA (p. 42) further states that middle mile projects “should offer substantial benefits to unserved and underserved areas relative to the costs of providing service.” To the extent these criteria are not satisfied by applicants, then objective scoring should award no points, and the application should be disqualified. Round 2 NOFA rules should clearly state that failure to meet criteria will result in disqualification.

II. Policy Issues Addressed in the NOFA

A. *Funding Priorities and Objectives.* RUS and NTIA should focus loan and grant activity in areas of greatest need of broadband investment, where funds can make “the greatest impact possible.” (RFI, 5.) The corollary to this policy is that RUS and NTIA should **not** grant applications that duplicate or overbuild existing broadband networks—a significant problem with Round 1 applications. Applications that would fund projects in areas where broadband facilities already provide access to broadband service, if granted, do not result in the greatest benefit. Rather, they act as a drain on current and future investment, thereby threatening jobs and sustainable economic development, particularly in rural areas where there is not sufficient population to sustain multiple, redundant networks. As noted above, the RFI recognizes the Recovery Act’s prohibition of funding projects in areas where RUS has funded a project. The reason for the RUS prohibition is to ensure that funded projects are not harmed by duplication of effort. Thus, the overarching priority for BIP and BTOP

populated and likely less expensive to serve. In the case of Montana’s rural telecom providers—and probably all rural telecom providers—such populations already are served with broadband. Thus, it is the least populated—not the greatest populations—that are in greatest need of broadband stimulus investment. (See Comments of MTA to Department of Agriculture and Department of Commerce, *In the Matter of American Recovery and Reinvestment Act of 2009, Broadband Initiatives*. Joint Request for Information. Docket No. 090309298-9299-01. April 13, 2009. p. 13.)

funding should be directed at projects which bring broadband service to areas of greatest need: i.e., unserved areas.

1. *Middle Mile “Comprehensive Community” Projects.* MTA cautions RUS and NTIA against focusing Round 2 funding on “comprehensive community” middle mile projects. Based on our experience with Round 1 proposals, such projects threaten more harm than potential benefit, since—at least in Montana—these projects largely would overbuild existing infrastructure and propose to serve the same comprehensive communities and anchor institutions already served by current network providers, including rural telecom providers as well as a variety of other middle mile network providers.

Any emphasis on funding middle mile projects is premature. There is sufficient experience in rural areas to make the preliminary conclusion that the “problem” is not access to middle mile facilities. Rather the problem is affordability and access to sufficient bandwidth. In this regard, both the FCC and NECA have on-going inquiries into middle mile issues.² Funding middle mile projects without knowing the nature of the middle mile issue would be putting the cart before the horse.

The RFI (RFI, 5.) asks if “the agencies’ goal [should] be to fund middle mile projects that provide new coverage of the greatest population and geography so that we can...[reach] the greatest number of people?” Middle mile projects that provide “new coverage” might meet the recommended policy goal of reaching unserved populations. However, reaching the “greatest population and geography and the greatest number of people” is likely to be counterproductive.

² On November 9, 2009, NECA issued a data request to all member companies. According to the survey’s cover letter, NECA is “conducting a two-part study to respond to FCC requests for data to determine: 1) the impact of middle and second mile access on broadband availability and deployment in rural areas; and 2) data quantifying the availability, pricing, and potential revenue sources for offsetting the costs of delivering broadband services in rural areas.” NECA asks its members to respond by December 11, 2009. See also: “*Comment Sought on Impact of Middle and Second Mile Access on Broadband Availability and Development.*” NBP Public Notice # 11. GN Docket Nos. 09-47, 09-51, 09-137. DA 09-2186. October 8, 2009. Comment date: November 4, 2009.

MTA believes the real issues more likely are affordability, adoption and training—not access to infrastructure.

The RFI further asks whether “comprehensive community” projects are “most sustainable to the extent that they are public-private partnerships through which the interests of the community are fully represented?” (RFI. 6.) As mentioned above, public-private partnerships may be effective, but only to the extent they actually fully represent the interests of the community. To ensure such representation is realized, it is imperative that the public and private interests in any public-private partnership demonstrate that any proposed projects have been fully noticed for public comment and that due process has served on all potentially affected parties. If middle mile applications in the Round 1 NOFA were subjected to a public due process procedure, MTA suspects that many applications may not have been filed as their necessity and sustainability would have been sufficiently questioned *prior* to their submission. By emphasizing public notice and comment and other due process in the beginning of the application process, debates about what areas are or are not served with what kinds of facilities will be resolved *before* any application is filed.

Such due process mechanisms should be applied to last mile applications too, regardless of whether such applications are proposed by public entities, private entities or public-private partnerships.

3. *Targeted Populations.* MTA believes that RUS and NTIA should not assign higher priority to any particular type of consumer. Such a preference system may encourage applicants to game their applications for political advantage. Moreover, it is not necessarily true that seniors, tribal, or other populations are unserved or underserved. In Montana, for example, rural telecom providers are deploying fiber to the premise on many Reservations. RUS and NTIA instead should concentrate on stimulating deployment of broadband services to *unserved consumers and communities*, be they low income, senior, tribal, or other composition.

To the extent there are gaps in broadband deployment and adoption, much of the cause of such gaps can be traced to *demand* for broadband service,

not access and supply. For example, one MTA member, Blackfoot Telecommunications, has deployed broadband service throughout 98 percent of its service area. Yet, the take-rate for broadband service is in the range of 60 percent. Consequently, Blackfoot has undertaken an aggressive outreach program to help train low-use populations such as rural seniors. They have teamed with experienced trainers, and they go to the consumer, rather than inviting consumers to meet them at locations that may be more difficult for consumers to reach. Blackfoot also subsidizes Internet access devices for its customers. Blackfoot's experience is not unique. Its experience does, however, point to the value of broadband adoption programs. Thus, as suggested in the RFI, MTA finds merit in shifting more BTOP funds into public computer centers and broadband adoption.

4. *Other Changes.* Modifying the application process to favor one population over another is problematic for both practical and political reasons. However, with regard to “leverag[ing] existing broadband infrastructure to reach currently unserved and unserved areas,” (RFI, 7.) MTA strongly urges the agencies to encourage such leverage in Round 2 application guidelines. By leveraging existing infrastructure, RUS and NTIA can ensure more efficient and effective expenditure of broadband stimulus funds. Regrettably, Round 1 applications appear—at least in Montana—to have foregone the opportunity to leverage existing networks, and instead often propose to duplicate or overbuild current network infrastructure. Not only is such duplication wasteful, it poses a threat to further investment and sustainable economic development. On the other hand, using existing infrastructure for expanded or enhanced broadband application benefits both the scale and scope of existing infrastructure while enabling applicants to realize innovative proposals for broadband adoption. By leveraging existing infrastructure, applications do not need to reinvent the wheel. Round 2 rules consequently should contain a requirement that applicants leverage existing infrastructure to the maximum possible extent.

B. *Program Definitions.* MTA has no objection to the definition of “Unserved Area.” However, we suggest modifications for the definition of

“Underserved Area: Last Mile Projects.” The definition of Last Mile Projects, for example, includes three subparts, two of which pertain to facilities access. The third subpart, however, refers to the rate of broadband subscribership in a proposed service area of less than 40%. We question whether the rate of subscribership is properly a function of broadband access. An area arguably could have 100% broadband access, but for a variety of reasons, subscribership may be less than 40%. Is the area “underserved?” We contend such an area is well served, but possibly under-subscribed. Such an area may be well suited for public computer center or broadband adoption funding; but it should not be considered underserved, at least from a facilities/infrastructure Last Mile or Middle Mile perspective.

Regarding the definition of “Underserved Area: Middle Mile Projects,” MTA believes that middle mile projects must comprise projects where all interconnection points terminate in census block areas that qualify as unserved or underserved for last mile projects. Otherwise, as we have seen from Round 1 applications, a middle mile project that overbuilds 1,500 miles existing broadband infrastructure can qualify as a middle mile project as long as it touches a single underserved census block. The other 1,499 miles may duplicate existing broadband facilities, but as long as the project touches a single census block that may meet the definition of underserved, the entire middle mile project may qualify for stimulus funding.

Finally, MTA cautions against substantial revision to the definition of “remote area.” As the RFI points out, the Round 1 “NOFA was intended to ensure that the most isolated, highest-cost to serve, unserved communities could receive the benefit of up to 100 percent grant financing.” (RFI, 7.) That objective should remain paramount. In fact, MTA recommends that serving unserved, remote areas is the primary objective of the broadband stimulus program. NTIA certainly can entertain comments on modifying the 50-mile standard, but not at the expense of compromising the objective.

C. Public Notice of Service Areas. The RFI indicates that some stakeholders are concerned that “their applications may be disqualified from

funding on the basis of information submitted by existing broadband service providers that they have no means to substantiate or rebut.” (RFI, 8.) MTA strongly supports the two-step review process which includes an opportunity for public scrutiny of applicants’ assertions. Applications should be disqualified if they purport to serve unserved or underserved areas which in reality are served. In fact, the current Round 1 NOFA process unnecessarily excludes public scrutiny by allowing only entities whose service areas are directly affected by applicants to comment. Public comment should be extended to any and all interested parties. MTA also strongly opposes any modifications that assume applicants’ assertions are correct regarding the existence of broadband service, or lack thereof, in any service area. Quite the contrary, MTA believes that due diligence provisions are insufficient in the Round 1 NOFA. If anything, public notice and due diligence requirements should be *strengthened* in the Round 2 NOFA.

D. *Interconnection and Nondiscrimination Requirements.* It would be discriminatory not to apply nondiscrimination requirements equally to all types of infrastructure projects regardless of the nature of the entity.

E. *Sale of Project Assets.* The Recovery Act and NOFA both—appropriately—place a high priority on transparency and accountability.³ MTA urges RUS and NTIA to maintain rules that maximize the accountability of applicants. Rules pertaining to the sale of project assets are an example of rules designed to ensure that taxpayer money is not wasted. In this regard, MTA does not believe that RUS and NTIA need be concerned that their rules are restrictive or can be construed as a barrier to participation in BIP and BTOP. Quite the contrary, MTA believes that the requirement that recipients of broadband funds retain possession of facilities funded by stimulus funds for 10 years should be retained. These restrictions are designed to prevent applicants from receiving federal funds and then “flipping” the company, or projects, for pecuniary gain.

³ “Additionally, a commitment to transparency in the award process and rigorous reporting requirements will help ensure accountability.” NOFA, 8.

The 10-year hold ensures that applicants are serious about sustainability. Such rules should not be weakened.

F. *Cost Effectiveness*. One measure of cost effectiveness is the extent to which an applicant proposes to leverage existing infrastructure, as discussed above. The FCC's National Broadband Initiative uses an example of shared trenching or conduit alone can save more than 50 percent of the total cost of a fiber build. Joint trenching can avoid as much as 78% of the cost of a project.⁴ Similar savings can be yielded by using existing network facilities for a project that proposes to reach unserved or underserved areas. NTIA and RUS also can require applicants to provide financial history (past 5 years) that demonstrates network investments per subscriber by the applicant in the proposed service area or similar areas, using internal cash flow, external financing, including RUS loans, venture capital or other capital. Such historic numbers would enable the agencies to determine whether the applicant's cost estimates for the proposed stimulus project were consistent with past investment history.

G. *Other*. MTA emphasizes that NOFA rules should maximize transparency and accountability. It is not the purpose of the broadband stimulus program to allocate as much money as possible as quickly as possible. Rather, RUS and NTIA should take great care to ensure that funds are properly spent, even if applicants complain that such rules may be burdensome. Participation in the broadband stimulus program is voluntary. The agencies should ensure that applicants make a bona fide case for spending stimulus funds; that proposed projects are subject to due diligence and public notice; and that taxpayer dollars are spent on providing broadband to areas and populations in greatest need.

Respectfully Submitted,

Geoffrey A. Feiss, General Manager
Montana Telecommunications Association
208 N. Montana Avenue, Suite 105
Helena, Montana 59601
406-442-4316
gfeiss@telecomassn.org

⁴ FCC Open Meeting, September 29, 2009. Briefing by Blair Levin, FCC National Broadband Initiative. Slide #51.